APPEAL NO. 93086

This appeal arises under the Texas Workers' Compensation Act of 1989 (1989 Act), TEX. REV. CIV. STAT. ANN. arts. 1.01 through 11.10 (Vernon Supp. 1993). On January 5, 1993, a contested case hearing was held before (hearing officer) to determine the extent of appellant's (claimant herein) injuries in a compensable accident. Mr. R determined that claimant injured his groin and right leg but did not injure his back, left leg and cervical area on September 3, 1991 while at work. Claimant appeals that the decision is against the great weight of the evidence pointing out that the statute does not impose a duty on the claimant to delineate each body part injured in the notice of injury. Respondent, carrier herein, replies that the decision was based on sufficient evidence, stating that the lack of prompt onset of recorded symptoms enabled the hearing officer to weigh whether the accident in question caused particular injuries.

DECISION

Finding that the evidence sufficiently supports the decision and order, we affirm.

Claimant was born in 1930 and began work for (employer) as a laborer in 1989. The injury in question occurred on September 3, 1991, when claimant caught his foot under a pallet (designed for use in supporting material to be moved by a forklift) and fell. He went to a hospital emergency room on September 4th where he was told to stay off work for five days. He then went to (Dr. C) on September 11, 1991, where he was reported to have injured his right leg and right groin. There were no fractures and recovery was estimated as requiring two weeks. On September 18, 1991, Dr. C again referred to the right leg and right groin and said the right leg pain was decreasing and returned claimant to work. On September 30, 1991, Dr. C found that maximum medical improvement had been reached with no impairment.

On February 13, 1992, Dr. C reports that claimant returned to his office still complaining of the right leg but added that he also complained for the first time about his left leg and a toe on his left foot. On April 28, 1992, Dr. C noted that he referred claimant to (Dr. W) for the foot problem. On May 5, 1992, Dr. W notes that claimant stated he slipped at work three months ago when his foot was caught under a beam. Dr. W found a dislocated toe on the left foot and a torn muscle in the left heel. He operated to realign the disarticulated digit. Thereafter, on August 3, 1992, claimant saw (Dr. S) for his back, neck, both legs (including left knee) and shoulder. On September 11, 1992, claimant filed an amended notice of injury citing both legs, left foot, shoulder, back, and groin. Dr. S noted severe spondylitis with spurs in claimant's lumbar area (spondylitis is defined by Dorland's Illustrated Medical Dictionary [27th Edition] as inflammation of the vertebrae-the doctor does not state whether the inflammation is post traumatic, the result of a disease, or rheumatoid in nature). The cervical spine also is reported to show spondylitis. The same note said the left knee showed osteophytes (defined as a bony excrescence or osseous [bony] outgrowth).)

The claimant testified that personnel at the hospital he first visited referred him to Dr. C. He added that the foot doctor, Dr. W, then referred him to Dr. S. He said that he told Dr. C his knees, back and arm hurt. He added that his feet hurt him right away; he hit his shoulder as he fell and it hurt right away; his back hurt a little right away; and his knees did not hurt right away. He did not explain why he visited no doctor in October, November, December, or January for his feet, his knees, back, and arm/shoulder. In February, as stated, Dr. C reported that on claimant's return, he reported only his left leg and left toe along with the initially reported right leg.

The carrier's employee who handles workers' compensation, M. F testified that claimant reported to her on the day of the accident that he pulled a groin muscle. After that he made no report of a problem until he told her in February 1992 (and showed her) that his toe was dislocated; he said it was from the accident. He never said he had any other injuries. Other personnel in supervisory positions for the employer testified that claimant never reported to them how he was injured, but that they had gathered information from Ms. F.

The hearing officer is the sole judge of the weight and credibility of the evidence. *See* Article 8308-6.34(e) of the 1989 Act. He could question why no mention of the dislocated toe was made for five months even though the right groin and right leg were reported to Dr. C within a few days, especially since the claimant testified that his feet hurt right away. *See* Texas Workers' Compensation Commission Appeals No. 92326, dated August 28, 1992 and No. 92617, dated January 14, 1993. He could note that claimant offered no explanation of how he treated, or managed to live with, the injuries for five months (toe) or 11 months (back) until seeking medical care. *See* Texas Workers' Compensation Commission Appeal No. 92543, dated November 23, 1992. While claimant in his appeal points out that there is no requirement that notice detail each specific injury, the question before this hearing officer was not one of notice, but rather was one of causation. As pointed out by the carrier's response, Texas Workers' Compensation Commission Appeal No. 92108, dated May 6, 1992, indicated that a hearing officer, in deciding whether a claimant met his burden to prove the injury originated at work, could consider whether there was a "prompt onset of symptoms following the work." This concern that causation be found was set forth in many cases under the law prior to the 1989 Act, including Insurance Company of North America v. Kneten, 440 S.W.2d 52 (Tex. 1969), which said, "(a)s in all those cases where a back injury promptly follows a lifting strain, or a ruptured blood vessel. . .it is reasonable to believe that what the employee did on the job precipitated physical failure." (emphasis added).

The emphasis in any discussion of causation must be that the hearing officer, as trier of fact, weighs the evidence, whether lay or medical. Cases finding compensable injuries have been affirmed with delays prior to a report of any injury to a doctor for over six months and a full year. In the latter cases, each claimant was able to show evidence of causation

sufficient to convince the hearing officer of the connection to the job accident. The burden of proof is on the claimant to show causation. *See* Martinez v. Travelers Insurance Co., 543 S.W.2d 911 (Tex. Civ. App.-Waco 1976, no writ) and Abeyta v. Travelers Insurance Co., 566 S.W.2d 708 (Tex. Civ. App.-Amarillo 1978, writ dismissed). The Appeals Panel will not reverse the hearing officer on a factual issue unless the decision is against the great weight and preponderance of the evidence. *See* In Re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1952) and Texas Workers' Compensation Commission Appeal No. 93078, dated March 15, 1993 (and countless others).

In this case the hearing officer could consider not only the delay in reporting particular injuries to the employer and to the claimant's doctor, but also the nature of the injuries not reported for an extended period, the prompt report of some injuries, and the inaccurate time period Dr. W recorded in the history which reduced the time from eight months to three months between the accident and the visit to that doctor. The hearing officer was not required to accept the claimant's testimony since he is an interested witness. *See* Presley v. Royal Indemnity Insurance Co., 557 S.W.2d 611 (Tex. Civ. App.-Texarkana 1977, no writ). The findings of fact and conclusions of law are sufficiently supported by the evidence, and the decision and order are affirmed.

Joe Sebesta
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Thomas A. Knapp
Appeals Judge